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 INTERCONTINENTAL HOTELS GROUP  
 8 RESOURCES, INC.; INTERCONTINENTAL  
 HOTELS OF SAN FRANCISCO, INC.; and SIX  
 9 CONTINENTS HOTELS, INC.

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA

12  
 13 LAURA MCCABE and LATROYA  
 14 SIMPSON, individually and on behalf  
 of similarly situated individuals,

15 Plaintiffs,

16 v.

17 INTERCONTINENTAL HOTELS  
 18 GROUP RESOURCES, INC.;  
 INTERCONTINENTAL HOTELS OF  
 19 SAN FRANCISCO, INC.; SIX  
 20 CONTINENTS HOTELS, INC.; and  
 DOES 2 through 10, inclusive,

21 Defendants.

CASE NO.

**C12-4818**

**DEFENDANTS' NOTICE OF  
 REMOVAL OF ACTION  
 (28 U.S.C. § 1332(d), 1441, 1446, and  
 1453)**

Complaint Filed: July 8, 2012  
 Trial Date: None

**FILE BY FAX**

**FILED**  
 SEP 14 2012  
 RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND

ADR

NC

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND PLAINTIFFS:

2 PLEASE TAKE NOTICE that Defendants InterContinental Hotels Group  
3 Resources, Inc., InterContinental Hotels of San Francisco, Inc., and Six Continents  
4 Hotels, Inc. (collectively, "Defendants") hereby remove to this Court pursuant to 28  
5 U.S.C. §§ 1332(d), 1441, and 1446, as amended in relevant part by the Class Action  
6 Fairness Act of 2005 ("CAFA"), this action, which was originally filed in the  
7 Superior Court of California in the County of Alameda and assigned Case No.  
8 12637671. The grounds for this removal are set forth herein.

9 **I. INTRODUCTION.**

10 On July 8, 2012, Plaintiffs Laura McCabe and Latroya Simpson (collectively,  
11 "Plaintiffs") commenced a putative class action in the Superior Court of the State of  
12 California for the County of Alameda, entitled *Laura McCabe and Latroya*  
13 *Simpson, individually and on behalf of a class of similarly situated individuals v.*  
14 *InterContinental Hotels Group Resources, Inc.; InterContinental Hotels of San*  
15 *Francisco, Inc. and DOES 1 through 10*, inclusive, as Case No. 12637671. A copy  
16 of the Complaint is attached hereto as Exhibit "A." Plaintiffs amended the  
17 Complaint on July 19, 2012, adding Defendant Six Continents Hotels, Inc. to the  
18 case. A copy of the First Amended Complaint is attached hereto as Exhibit "B."  
19 The First Amended Complaint ("Complaint") alleges one cause of action for  
20 unlawful recording and interception of cellular telephone calls in violation of  
21 California Penal Code § 632.7, and seeks statutory damages of \$5,000 "per  
22 violation" under California Penal Code § 637.2 (hereafter, the "State Court  
23 Action"). (Exhibit B, ¶¶ 38, 41.)

24 **II. THIS COURT HAS JURISDICTION UNDER CAFA.**

25 Defendants remove the State Court Action pursuant to CAFA, codified under  
26 28 U.S.C. § 1332(d). CAFA provides this Court with original jurisdiction of this  
27 action and permits Defendants to remove the State Court Action from the California  
28 state court to this Court.

1 CAFA vests district courts with original jurisdiction over class actions when  
 2 the aggregate amount in controversy for all putative class members exceeds \$5  
 3 million (exclusive of interest and costs) and when any member of the putative class  
 4 of plaintiffs is a citizen of a state different from any defendant. 28 U.S.C.  
 5 § 1332(d)(2). These requirements are satisfied in this action, as set forth below.

6 Neither the permissive nor mandatory provisions of CAFA for declining  
 7 original jurisdiction are applicable to this action. Accordingly, as discussed further  
 8 below, federal jurisdiction is mandatory under CAFA.

9 **A. Class Action.**

10 The State Court Action is a class action as defined by CAFA. CAFA  
 11 provides:

12 [T]he term “class action” means any civil action filed  
 13 under rule 23 of the Federal Rules of Civil Procedure or  
 14 similar State statute or rule of judicial procedure  
 15 authorizing an action to be brought by 1 or more  
 representative persons as a class action.

16 28 U.S.C. § 1332(d)(1)(B).

17 Plaintiffs filed the State Court Action as a putative class action on behalf of  
 18 themselves and a proposed class of plaintiffs, under California Code of Civil  
 19 Procedure section 382. (*See* Exhibit B, ¶ 23.)

20 The California rule governing the maintenance of class actions, California  
 21 Code of Civil Procedure section 382, is analogous to Federal Rule of Civil  
 22 Procedure 23.

23 The State Court Action therefore falls within the definition of a “class action”  
 24 under CAFA.

25 **B. Removal Under CAFA.**

26 CAFA provides that a class action against a non-governmental entity may be  
 27 removed if: (1) the number of proposed class members is not less than 100; (2) any  
 28



1 member of the proposed plaintiff class is a citizen of a state different from any  
 2 defendant; and (3) the aggregate amount in controversy exceeds \$5 million,  
 3 excluding interests and costs. 28 U.S.C. § 1332(d), (d)(5), and § 1453(b).

#### 4 **1. Plaintiffs' Proposed Class.**

5 Plaintiffs purport to represent a class of California individuals who called  
 6 Defendants' reservation telephone numbers from a cellular or cordless telephone  
 7 located in California, and whose telephone conversations were allegedly recorded  
 8 and/or monitored by Defendants without adequate disclosures during the applicable  
 9 claims period.<sup>1</sup> (*See* Exhibit B, ¶ 23.)

10 As set forth in the attached declaration, Defendants estimate that  
 11 approximately 7,000 California calls that reached an agent and were recorded  
 12 within the one year preceding the filing of the Complaint were made from cellular  
 13 telephones. (*See* Declaration of Kevin Randall in Support of Defendants'  
 14 InterContinental Hotels Group Resources, Inc., InterContinental Hotels of San  
 15 Francisco, Inc., and Six Continents Hotels, Inc.'s Notice of Removal of Action,  
 16 attached hereto as Exhibit L, ¶ 4.) Therefore, CAFA's minimum putative class size  
 17 of 100 members is satisfied.

#### 18 **2. Diversity of Citizenship Under CAFA.**

19 Defendants are incorporated under the laws of the State of Delaware, with  
 20 their principal places of business in Atlanta, Georgia. (Exhibit L, ¶ 1.) Therefore,  
 21 each Defendant is a citizen of Delaware and Georgia.

22 Plaintiffs reside in California. (Exhibit B, ¶ 4). Therefore, each Plaintiff is a  
 23 citizen of the State of California. 28 U.S.C. § 1332(a). Also, the putative class is  
 24 made up of persons in California. (Exhibit B, ¶ 23.)

---

25 <sup>1</sup> Plaintiffs telephoned the reservation telephone numbers of Defendant Six  
 26 Continents Hotels, Inc. By way of this Notice, Defendants do not concede  
 27 Defendants InterContinental Hotels Group, Inc. and InterContinental Hotels of San  
 28 Francisco, Inc. are proper defendants, and reserve all arguments with respect  
 thereto.

1 Because at least one member of the proposed class of plaintiffs is a citizen of  
2 a state different from a Defendant, within the meaning of 28 U.S.C.

3 § 1332(d)(2)(A), CAFA's diversity of citizenship requirement is satisfied.

4 The diversity that exists in this action not only satisfies the minimal diversity  
5 of citizenship requirement under CAFA, but also precludes the applicability of  
6 exceptions in 28 U.S.C. § 1332(d)(3) and (d)(4) because Defendants are not citizens  
7 of the forum state of California.

### 8 3. Amount in Controversy.

9 CAFA's third requirement—that the aggregate amount in controversy,  
10 exclusive of interest and costs, exceed \$5 million—is also satisfied here. 28 U.S.C.  
11 § 1332(d)(2).

12 As to damages, Plaintiffs seek to recover "\$5,000 in statutory damages per  
13 violation, even in the absence of proof of actual damages...." (Exhibit B, ¶ 41.)  
14 California Penal Code § 637.2 states, in relevant part, that "[a]ny person who has  
15 been injured by a violation of this chapter may bring an action against the person  
16 who committed the violation for the greater of the following amounts: (1) Five  
17 thousand dollars (\$5,000)...." Therefore, the damages that Plaintiffs seek for the  
18 putative class for each telephone call recorded during the putative class period  
19 referenced in the Complaint is \$5,000.<sup>2</sup>

20 As set forth in the attached declaration, approximately seven thousand  
21 (7,000) cellular telephone calls from California were recorded during the putative  
22 class period. (See Exhibit L, ¶ 4.) Because there were approximately seven  
23 thousand telephone calls recorded during the alleged class period, and Plaintiffs  
24 seek to recover at least \$5,000 per call, the amount in controversy in this action

25  
26 <sup>2</sup> Defendants do not admit that the Complaint states a claim upon which relief may  
27 be granted, or that each Plaintiff or any putative class member is entitled to \$5,000  
28 per violation, much less any damages or any other relief sought in the Complaint.  
Nor do Defendants admit that a class can be certified here.

1 exceeds \$5 million. Therefore, CAFA's requirement that the aggregate amount in  
2 controversy exceed \$5 million is met here.

### 3 **III. 28 U.S.C. § 1446 REQUIREMENTS.**

#### 4 **A. This Notice of Removal Is Timely Filed.**

5 Defendants were served with the Complaint and supporting documents on  
6 August 30, 2012. This notice of removal is timely pursuant to 28 U.S.C. sections  
7 1446(b) and 1453(b), because it is filed within thirty (30) days after Defendants  
8 were served. A copy of the Summons is attached hereto as Exhibit "C." Copies of  
9 the Notices of Acknowledgement and Receipt by each Defendant are attached  
10 hereto as Exhibit "D."

#### 11 **B. Procedural Requirements.**

12 Section 1446(a) requires a removing party to provide this Court a copy of all  
13 "process, pleadings and orders" served on it in the State Court Action. The  
14 Complaint, First Amended Complaint (with application) and Summons are attached  
15 as Exhibits "A," "B," and "C" respectively. Attached hereto as Exhibit "E" is the  
16 ADR Information Packet. Attached hereto as Exhibit "F" is the Notice of Hearing.  
17 Attached hereto as Exhibit "G" is the Order Designating Case as Complex.  
18 Attached hereto as Exhibit "H" is Plaintiffs' Case Management Conference  
19 Statement. Attached hereto as Exhibit "I" is Defendants' Case Management  
20 Conference Statement. Attached hereto as Exhibit "J" is the Order Continuing the  
21 Case Management Conference.

22 Exhibits A through J constitute all of the pleadings, process, and orders in the  
23 State Court Action.

24 Pursuant to 28 U.S.C. section 1446(d), Defendants are filing a copy of the  
25 Notice of Removal with the Clerk of the Alameda County Superior Court and  
26 serving Plaintiffs with same. A copy of the Notice to the Superior Court (which is  
27 being served on Plaintiffs) is attached hereto as Exhibit "K".  
28

1 WHEREFORE, Defendants respectfully submit that (1) CAFA applies to this  
2 action because the proposed class contains at least 100 members, (2) at least one  
3 member of the proposed class is a citizen of a state different than a Defendant's  
4 state of citizenship, (3) the aggregate amount in controversy exceeds \$5 million,  
5 and (4) the procedural requirements under 28 U.S.C. § 1446 are met. For these  
6 reasons, this action is properly removed to this Court.

7  
8 Dated: September 13, 2012

DLA PIPER LLP (US)

9  
10 By: 

11 EDWARD D. TOTINO  
12 ANA TAGVORYAN  
13 Attorneys for Defendants  
14 INTERCONTINENTAL HOTELS  
15 GROUP RESOURCES, INC.;  
16 INTERCONTINENTAL HOTELS OF  
17 SAN FRANCISCO, INC.; and SIX  
18 CONTINENTS HOTELS, INC.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT A





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11 Attorneys for Plaintiffs  
 12 LAURA MCCABE and LATROYA SIMPSON

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 14 IN AND FOR THE COUNTY OF ALAMEDA

15 LAURA MCCABE and LATROYA  
 16 SIMPSON, individually and on behalf of a  
 17 class of similarly situated individuals,

18 Plaintiffs,

19 v.

20 INTERCONTINENTAL HOTELS GROUP  
 21 RESOURCES, INC.; INTERCONTINENTAL  
 HOTELS OF SAN FRANCISCO, INC.; and  
 DOES 1 through 10, inclusive,

22 Defendants.

Case No.

12637671

CLASS ACTION

COMPLAINT FOR DAMAGES AND  
 INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

FILED  
 ALAMEDA COUNTY

JUL - 8 2012

By

*Erica Padano* Clerk

28 COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Exhibit A 7

1 CLASS ACTION COMPLAINT

2 Plaintiffs Laura McCabe and Latroya Simpson ("Plaintiffs"), on behalf of themselves and  
3 a class (the "Class") of similarly situated individuals as defined below, allege on information and  
4 belief and the investigation by counsel as follows:

5 INTRODUCTION

6 1. This class action lawsuit arises out of Defendants' policy and practice of  
7 recording and/or intercepting calls made or routed to the telephone numbers 1-888-HOLIDAY  
8 (1-888-465-4329) and 1-888-211-9874 without the consent of all parties (collectively "toll-free  
9 reservation telephone numbers"). 1-888-HOLIDAY connects callers with central reservations  
10 for Holiday Inn hotels, a hotel brand of Defendants. 1-888-211-9874 connects callers with  
11 Priority Club Rewards, a rewards program owned by Defendants, through which callers can  
12 make hotel reservations for Holiday Inn hotels. Defendants then intentionally and surreptitiously  
13 record and/or intercept (i.e., monitor) telephone calls made or routed to the toll-free reservation  
14 telephone numbers without warning or disclosing to callers that they are doing so. (The terms  
15 "intercept" and "monitor" are used interchangeably in this complaint.)

16 2. Defendants' policy and practice of recording and intercepting telephone  
17 conversations without the consent of all parties violates California's Invasion of Privacy Act  
18 (Penal Code §§ 630, *et seq.*). Specifically, Defendants' policy and practice violate Penal Code §  
19 632.7, which prohibits the recording or intercepting (i.e., monitoring) of a communication made  
20 from a cellular or cordless telephone without the consent of all parties to the communication.

21 3. As a result of Defendants' violations, all individuals who called or were routed to  
22 the toll-free reservation telephone numbers and were recorded or monitored by Defendants  
23 surreptitiously and without disclosure are entitled to an award of statutory damages and  
24 injunctive relief as set forth in Penal Code § 637.2.

25 PARTIES

26 4.

27 a. Plaintiff Laura McCabe is an individual and a resident of California.

28 b. Plaintiff Latroya Simpson is an individual and resident of Sacramento.

5 6. Intercontinental Hotels of San Francisco, Inc. ("IHSF") is a corporation  
6 headquartered in Atlanta, Georgia. IHSF regularly does business throughout the United States.  
7 Defendant systematically and continuously does business in California and with California  
8 residents.

7. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as DOES 1 through 10, inclusive, and therefore sue those defendants by those fictitious names. Plaintiffs will amend this Complaint to allege their true names and capacities when ascertained. Plaintiffs are informed and believe and on that ground allege that each of the fictitiously named defendants is responsible in some manner for the occurrences alleged and that Plaintiffs' injuries and damages, as alleged, are proximately caused by those occurrences.

15           8.       "Defendants" means and refers to defendant IHGR, defendant IHSP, and the  
16       fictitiously named Defendants, each and all of them.

17 9. Plaintiffs are informed and believe and on that ground allege that, at all relevant  
18 times, each Defendant was the principal, agent, partner, joint venturer, officer, director,  
19 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or  
20 predecessor in interest of some or all of the other Defendants, and was engaged with some or all  
21 of the other Defendants in a joint enterprise for profit, and bore such other relationships to some  
22 or all of the other Defendants so as to be liable for their conduct with respect to the matters  
23 alleged below. Plaintiffs are informed and believe and on that ground allege that each Defendant  
24 acted pursuant to and within the scope of the relationships alleged above, and that each knew or  
25 should have known about and authorized, ratified, adopted, approved, controlled, aided and  
26 abetted the conduct of all Defendants.

**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

1       10. This Court has subject matter jurisdiction over this action under California Penal  
2 Code §§ 632.7 and 637.2.

3       11. This Court has personal jurisdiction over the parties because defendants IHGR  
4 and IHSP continually and systematically have conducted business in the State of California.  
5 Likewise, Plaintiffs' rights were violated in the State of California and arose out of their contact  
6 with Holiday Inn from California.

7       12. Venue is proper in this Court because Code of Civil Procedure §§ 395 and 395.5  
8 and case law interpreting those sections provide that if a foreign business entity fails to designate  
9 with the office of the California Secretary of State a principal place of business in California, it is  
10 subject to being sued in any county that a plaintiff desires. On information and belief, Defendant  
11 IHGR and Defendant IHSP both are foreign business entities and each has failed to designate a  
12 principal place of business with the office of the Secretary of State as of the date this Complaint  
13 was filed.

14                   **FACTUAL ALLEGATIONS COMMON TO THE CLASS**

15       13. Plaintiffs are informed and believe and on that ground allege that Holiday Inn is a  
16 hotel brand owned by Defendants.

17       14. Plaintiffs are informed and believe and on that ground allege that the toll-free  
18 reservation telephone numbers connect callers to central reservations for Holiday Inn; that the  
19 central reservations system is owned and operated by defendants; and that all Holiday Inn hotels,  
20 including Holiday Inn franchises, are required to participate in the central reservations system.

21       15. Plaintiffs are informed and believe and on that ground allege that Defendants'  
22 employees and agents at the central reservations call center receive incoming calls from callers  
23 including California callers.

24       16. Plaintiffs are informed and believe and on that ground allege that Defendants  
25 intentionally have used technology consisting of hardware and/or software to carry out a practice  
26 and policy of recording and/or intercepting (i.e., monitoring) those calls made to the central  
27 reservations call center.

28       17. Plaintiffs are informed and believe and on that ground allege that Defendants'



1 employees and agents at the central reservations call center were directed, trained, and instructed  
2 to, and did, record and/or monitor telephone calls between the central reservations call center and  
3 callers, including California callers.

4 18. During the period 2011 through early 2012, Plaintiff Laura McCabe ("McCabe")  
5 called 1-888-211-9874 from California using her cellular telephone. McCabe called 1-888-211-  
6 9874 to inquire about hotel rates and/or to make reservations. Accordingly, during her telephone  
7 calls with Defendants, McCabe shared sensitive personal information with Defendants, including  
8 her name and/or credit card information.

9 19. From February through July 2011 and in September 2011, Plaintiff Latroya  
10 Simpson ("Simpson") called 1-888-HOLIDAY from California using her cellular telephone.  
11 Simpson called 1-888-HOLIDAY to inquire about hotel rates and/or to make reservations.  
12 Accordingly, during her telephone calls with Defendants, Simpson shared sensitive personal  
13 information with Defendants, including her name and/or credit card information.

14 20. During Plaintiffs' telephone calls to Defendants, Defendants failed to disclose to  
15 Plaintiffs that their telephone conversations with Defendants were being recorded and/or  
16 monitored. Plaintiffs did not give and could not have given consent for the telephone calls to be  
17 recorded or monitored because they were unaware that Defendants were engaged in that practice  
18 during the telephone calls. Plaintiffs are informed and believe and on that ground allege that  
19 callers who called or were routed to the toll-free reservation telephone numbers were not  
20 informed by Defendants or anyone else that their calls were being recorded and/or monitored.  
21 Thus, that recording and/or monitoring necessarily occurred without the callers' knowledge or  
22 consent.

23 21. Because there was no warning that calls would be recorded or monitored,  
24 Plaintiffs had a reasonable expectation that their telephone conversations with Defendants'  
25 employees and agents were, and would remain, private and confined to the parties on the  
26 telephone. That recording and/or monitoring without their consent is highly offensive to  
27 Plaintiffs and would be highly offensive to a reasonable person, including members of the  
28 proposed Plaintiff Class.

CLASS ACTION ALLEGATIONS

22. Plaintiffs bring this action under California Code of Civil Procedure § 382 on behalf of themselves and the class (the "Class") defined as follows:

All California residents who, at any time during the applicable limitations period preceding the filing of this Complaint through the date of resolution, participated in one or more telephone conversations with the Holiday Inn toll-free reservation telephone numbers from a cellular or cordless telephone located in California and whose calls with the Holiday Inn toll-free reservation telephone numbers were recorded and/or monitored by Defendants surreptitiously or without disclosure.

23. The Class Plaintiffs seek to represent contains numerous members and is clearly ascertainable including, without limitation, by using the Defendants' records and/or Defendants' telephone company's or other toll-free service provider's records regarding calls to the toll-free reservation telephone numbers to determine the size of the Class and to determine the identities of individual Class members. Plaintiffs reserve the right under Rule 3.765 of the California Rules of Court to amend or modify the Class definitions or to add subclasses or limitations to particular issues.

24. By their unlawful actions, Defendants have violated Plaintiffs' and the Class's privacy rights under California's Invasion of Privacy Act, California Penal Code §§ 630 *et seq.* The questions raised are, therefore, of common or general interest to the Class members, who have a well-defined community of interest in the questions of law and fact raised in this action.

25. Plaintiffs' claims are typical of those of the Class, as Plaintiffs now suffer from the same violations of the law as other putative Class members. Plaintiffs have retained counsel with substantial experience in prosecuting complex litigation and class actions to represent them and the Class, and Plaintiffs will fairly and adequately represent the interests of the Class.

26. This action may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation and the proposed Class is ascertainable.

1 Numerosity

2 27. Based on information and belief, the Class consists of at least seventy-five  
 3 individuals, making joinder of individual cases impracticable.

4 Typicality

5 28. Plaintiffs' claims are typical of the claims of all of the other members of the  
 6 Class. Plaintiffs' claims and the Class members' claims are based on the same legal theories and  
 7 arise from the same unlawful conduct, resulting in the same injury to Plaintiffs and to all of the  
 8 other Class members.

9 Common Questions of Law and Fact

10 29. There are questions of law and fact common to the Class that predominate over  
 11 any questions affecting only individual Class members. Those common questions of law and  
 12 fact include, without limitation, the following:

- 13 a. Whether Defendants have a policy or practice of recording and/or  
 14 intercepting telephone calls made to the Holiday Inn toll-free reservation  
 15 telephone numbers;
- 16 b. Whether Defendants have a policy or practice of not disclosing to callers  
 17 whose calls are recorded and/or intercepted that their conversations with  
 18 the Holiday Inn toll-free reservation telephone numbers would be recorded  
 19 and/or monitored;
- 20 c. Whether Defendants have a policy or practice of not obtaining callers'  
 21 consent to record and/or monitor telephone calls made to the Holiday Inn  
 22 toll-free reservation telephone numbers;
- 23 d. Whether Defendants violated California Penal Code § 632.7 by recording  
 24 and/or monitoring telephone conversations between callers and the  
 25 Holiday Inn toll-free reservation telephone numbers surreptitiously and  
 26 without disclosure;
- 27 e. Whether Class members are entitled to statutory damages of \$5,000 under  
 28 Penal Code § 632.7 for every violation of Penal Code § 632.7.

1 Adequacy

2 30. Plaintiffs will fairly and adequately represent and protect the interests of the other  
3 members of the Class. Plaintiffs have retained counsel with substantial experience in  
4 prosecuting complex litigation and class actions. Plaintiffs and their counsel are committed to  
5 prosecuting this action vigorously on behalf of the other Class members and have the financial  
6 resources to do so. Neither Plaintiffs nor their counsel have any interests adverse to those of the  
7 other Class members.

8 Superiority

9 31. A class action is superior to other available methods for the fair and efficient  
10 adjudication of this controversy because individual litigation of the claims of all Class members  
11 is impracticable and questions of law and fact common to the Class predominate over any  
12 questions affecting only individual members of the Class. Even if every individual Class  
13 member could afford individual litigation, the court system could not. It would be unduly  
14 burdensome to the courts if individual litigation of the numerous cases were to be required.  
15 Individualized litigation also would present the potential for varying, inconsistent, or  
16 contradictory judgments and would magnify the delay and expense to all parties and to the court  
17 system resulting from multiple trials of the same factual issues. By contrast, the conduct of this  
18 action as a class action with respect to some or all of the issues will present fewer management  
19 difficulties, conserve the resources of the court system and the parties and protect the rights of  
20 each Class member. Further, it will prevent the very real harm that would be suffered by  
21 numerous putative Class members who simply will be unable to enforce individual claims of this  
22 size on their own, and by Defendants' competitors, who will be placed at a competitive  
23 disadvantage as their reward for obeying the law. Plaintiffs anticipate no difficulty in the  
24 management of this case as a class action.

25 32. The prosecution of separate actions by individual Class members may create a  
26 risk of adjudications with respect to them that would, as a practical matter, be dispositive of the  
27 interests of other Class members not parties to those adjudications or that would substantially  
28 impair or impede the ability of those non-party Class members to protect their interests.



1        33. The prosecution of individual actions by Class members would establish  
2 inconsistent standards of conduct for Defendants.

3        34. Defendants have acted or refused to act in respects generally applicable to the  
4 Class, thereby making appropriate final and injunctive relief or corresponding declaratory relief  
5 with regard to members of the Class as a whole as requested herein. Likewise, Defendants'  
6 conduct as described above is unlawful, is capable of repetition, and will continue unless  
7 restrained and enjoined by the Court.

8                                    **FIRST CAUSE OF ACTION**

9                    **Unlawful Recording and Intercepting of Communications against All Defendants**

10                                    **(Violation of California Penal Code § 632.7)**

11        35. Plaintiffs incorporate each allegation set forth above as if fully set forth herein  
12 and further alleges as follows.

13        36. Each of Plaintiffs participated in at least one telephone call that she made from  
14 California with Defendants' employees or agents at the Holiday Inn toll-free reservation  
15 telephone numbers and each is informed and believes that she initiated it through a call to the  
16 toll-free reservation telephone numbers. Each of Plaintiffs used a cellular telephone to engage in  
17 the conversations.

18        37. Plaintiffs are informed and believe and on that ground allege that, at all relevant  
19 times, Defendants had a policy and practice of using a telephone system that enabled them to  
20 surreptitiously record and/or monitor conversations between Plaintiffs and Class members using  
21 cellular or cordless telephones and the Holiday Inn toll-free reservation telephone numbers.

22        38. Plaintiffs are informed and believe and on that ground allege that Defendants had  
23 and followed a policy and practice of intentionally and surreptitiously recording and/or  
24 monitoring Plaintiffs' and Class members' cellular and cordless telephone conversations with the  
25 Holiday Inn toll-free reservation telephone numbers.

26        39. Plaintiffs are informed and believe and on that ground allege that Defendants had  
27 and followed a policy and practice of not advising or warning Plaintiffs or Class members that  
28 their cellular and cordless telephone communications with the Holiday Inn toll-free reservation

1 telephone numbers would be recorded and/or monitored. Because Defendants did not disclose to  
 2 Plaintiffs or Class members that their calls were being recorded and/or monitored, Defendants  
 3 did not obtain, and could not have obtained, Plaintiffs' or Class members' express or implied  
 4 advance consent to the recording or monitoring of those conversations. As a result, Plaintiffs  
 5 and Class members had an objectively reasonable expectation that their calls were not being  
 6 recorded and/or monitored. That expectation and its objective reasonableness arise, in part, from  
 7 the objective offensiveness of surreptitiously recording people's conversations, the absence of  
 8 even a simple pre-recorded message as short as four simple words — "calls may be recorded" —  
 9 and the ease with which such a message could have been put in place. As the California  
 10 Supreme Court has stated, "in light of the circumstance that California consumers are  
 11 accustomed to being informed at the outset of a telephone call whenever a business entity intends  
 12 to record the call, it appears equally plausible that, in the absence of such an advisement, a  
 13 California consumer reasonably would anticipate that such a telephone call is not being recorded,  
 14 particularly in view of the strong privacy interest most persons have with regard to the personal  
 15 financial information frequently disclosed in such calls." (See *Kearney v. Salomon Smith Barney*  
 16 (2006) 39 Cal. 4th 95.)

17 40. Defendants' conduct as described above violated California Penal Code §  
 18 632.7(a). Under Penal Code § 632.2, Plaintiffs and Class members therefore are entitled to  
 19 \$5,000 in statutory damages per violation, even in the absence of proof of actual damages, the  
 20 amount deemed proper by the California Legislature. Plaintiffs and Class members also are  
 21 entitled to injunctive relief to enjoin further violations.

22  
 23 **PRAYER FOR RELIEF**

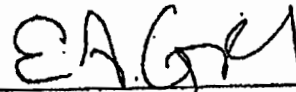
24 **WHEREFORE**, Plaintiffs, on behalf of themselves and members of the Class, pray for  
 25 the following relief:

- 26 a. An order certifying the Class and appointing Plaintiffs representatives of the  
 27 Class, and appointing counsel for Plaintiffs as lead counsel for the Class;

- 1 b. An order declaring that the actions of Defendants, as described above, violate
- 2 California Penal Code § 632.7;
- 3 c. A judgment for and award of statutory damages to Plaintiffs and the members of
- 4 the Class pursuant to California Penal Code § 637.2;
- 5 d. A permanent injunction under Penal Code § 637.2 enjoining Defendants from
- 6 engaging in further conduct in violation of California Penal Code § 630, *et seq*;
- 7 e. Payment of costs of the suit;
- 8 f. Payment of attorneys' fees under California Code of Civil Procedure § 1021.5;
- 9 g. An award of pre- and post-judgment interest to the extent allowed by law; and
- 10 h. For such other or further relief as the Court may deem proper.

11  
12 Respectfully submitted,

13 KELLER GROVER LLP

14 

15 Eric A. Grover  
16 Attorneys for Plaintiffs

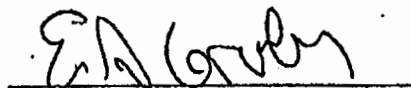
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26  
27  
28 Dated: July 3, 2012

**JURY DEMAND**

Plaintiffs request a trial by jury of all claims that can be so tried.

Respectfully submitted,

**KELLER GROVER LLP**



Eric A. Grover  
Attorneys for Plaintiffs

Dated: July 3, 2012



# EXHIBIT B



FILED  
ALAMEDA COUNTY

2012 JUL 19 PM 4:21

*Judith de Jesus*

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10  
11 Attorneys for Plaintiffs  
LAURA MCCABE and LATROYA SIMPSON  
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 IN AND FOR THE COUNTY OF ALAMEDA

15 LAURA MCCABE and LATROYA  
16 SIMPSON, individually and on behalf of a  
class of similarly situated individuals,

17 Plaintiffs,

18 v.

19 INTERCONTINENTAL HOTELS GROUP  
20 RESOURCES, INC.; INTERCONTINENTAL  
HOTELS OF SAN FRANCISCO, INC.; SIX  
21 CONTINENTS HOTELS, INC.; and DOES 2  
through 10, inclusive,

22 Defendants  
23  
24  
25  
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28

Case No: RG12637671

CLASS ACTION

FIRST AMENDED COMPLAINT FOR  
DAMAGES AND INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

BY FAX

1 **CLASS ACTION COMPLAINT**

2 Plaintiffs Laura McCabe and Latroya Simpson ("Plaintiffs"), on behalf of themselves and  
3 a class (the "Class") of similarly situated individuals as defined below, allege on information and  
4 belief and the investigation by counsel as follows:

5 **INTRODUCTION**

6 1. This class action lawsuit arises out of Defendants' policy and practice of  
7 recording and/or intercepting calls made or routed to the telephone numbers 1-888-HOLIDAY  
8 (1-888-465-4329) and 1-888-211-9874 without the consent of all parties (collectively "toll-free  
9 reservation telephone numbers"). 1-888-HOLIDAY connects callers with central reservations  
10 for Holiday Inn hotels, a hotel brand of Defendants. 1-888-211-9874 connects callers with  
11 Priority Club Rewards, a rewards program owned by Defendants, through which callers can  
12 make hotel reservations for Holiday Inn hotels. Defendants then intentionally and surreptitiously  
13 record and/or intercept (i.e., monitor) telephone calls made or routed to the toll-free reservation  
14 telephone numbers without warning or disclosing to callers that they are doing so. (The terms  
15 "intercept" and "monitor" are used interchangeably in this complaint.)

16 2. Defendants' policy and practice of recording and intercepting telephone  
17 conversations without the consent of all parties violates California's Invasion of Privacy Act  
18 (Penal Code §§ 630, *et seq.*). Specifically, Defendants' policy and practice violate Penal Code §  
19 632.7, which prohibits the recording or intercepting (i.e., monitoring) of a communication made  
20 from a cellular or cordless telephone without the consent of all parties to the communication.

21 3. As a result of Defendants' violations, all individuals who called or were routed to  
22 the toll-free reservation telephone numbers and were recorded or monitored by Defendants  
23 surreptitiously and without disclosure are entitled to an award of statutory damages and  
24 injunctive relief as set forth in Penal Code § 637.2.

25 **PARTIES**

26 4.

27 a. Plaintiff Laura McCabe is an individual and a resident of California.

28 b. Plaintiff Latroya Simpson is an individual and resident of California.

1           5.     Intercontinental Hotels Group Resources, Inc. ("IHGR") is a corporation  
2 headquartered in Atlanta, Georgia. IHGR regularly does business throughout the United States.  
3 Defendant systematically and continuously does business in California and with California  
4 residents.

5           6.     Intercontinental Hotels of San Francisco, Inc. ("IHSF") is a corporation  
6 headquartered in Atlanta, Georgia. IHSF regularly does business throughout the United States.  
7 Defendant systematically and continuously does business in California and with California  
8 residents.

9           7.     Six Continents Hotels, Inc. ("SCH"), hereby substituted in for Doe Number 1, is a  
10 corporation headquartered in Atlanta, Georgia. SCH regularly does business throughout the  
11 United States. Defendant systematically and continuously does business in California and with  
12 California residents.

13           8.     Plaintiffs are ignorant of the true names and capacities of defendants sued herein  
14 as DOES 1 through 10, inclusive, and therefore sue those defendants by those fictitious names.  
15 Plaintiffs will amend this Complaint to allege their true names and capacities when ascertained.  
16 Plaintiffs are informed and believe and on that ground allege that each of the fictitiously named  
17 defendants is responsible in some manner for the occurrences alleged and that Plaintiffs' injuries  
18 and damages, as alleged, are proximately caused by those occurrences.

19           9.     "Defendants" means and refers to defendant IHGR, defendant IHSF, defendant  
20 SCH, and the fictitiously named Defendants, each and all of them.

21           10.    Plaintiffs are informed and believe and on that ground allege that, at all relevant  
22 times, each Defendant was the principal, agent, partner, joint venturer, officer, director,  
23 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or  
24 predecessor in interest of some or all of the other Defendants, and was engaged with some or all  
25 of the other Defendants in a joint enterprise for profit, and bore such other relationships to some  
26 or all of the other Defendants so as to be liable for their conduct with respect to the matters  
27 alleged below. Plaintiffs are informed and believe and on that ground allege that each Defendant  
28 acted pursuant to and within the scope of the relationships alleged above, and that each knew or



1 should have known about and authorized, ratified, adopted, approved, controlled, aided and  
2 abetted the conduct of all Defendants.

### 3 JURISDICTION AND VENUE

4 11. This Court has subject matter jurisdiction over this action under California Penal  
5 Code §§ 632.7 and 637.2.

6 12. This Court has personal jurisdiction over the parties because defendants IHGR,  
7 IHSP and SCH continually and systematically have conducted business in the State of California.  
8 Likewise, Plaintiffs' rights were violated in the State of California and arose out of their contact  
9 with Holiday Inn from California.

10 13. Venue is proper in this Court because Code of Civil Procedure §§ 395 and 395.5  
11 and case law interpreting those sections provide that if a foreign business entity fails to designate  
12 with the office of the California Secretary of State a principal place of business in California, it is  
13 subject to being sued in any county that a plaintiff desires. On information and belief, Defendant  
14 IHGR, Defendant IHSP, and Defendant SCH all are foreign business entities and each has failed  
15 to designate a principal place of business with the office of the Secretary of State as of the date  
16 this Complaint was filed.

### 17 FACTUAL ALLEGATIONS COMMON TO THE CLASS

18 14. Plaintiffs are informed and believe and on that ground allege that Holiday Inn is a  
19 hotel brand owned by Defendants.

20 15. Plaintiffs are informed and believe and on that ground allege that the toll-free  
21 reservation telephone numbers connect callers to central reservations for Holiday Inn; that the  
22 central reservations system is owned and operated by defendants; and that all Holiday Inn hotels,  
23 including Holiday Inn franchises, are required to participate in the central reservations system.

24 16. Plaintiffs are informed and believe and on that ground allege that Defendants'  
25 employees and agents at the central reservations call center receive incoming calls from callers  
26 including California callers.

27 ~~17. Plaintiffs are informed and believe and on that ground allege that Defendants~~  
28 intentionally have used technology consisting of hardware and/or software to carry out a practice

1 and policy of recording and/or intercepting (i.e., monitoring) those calls made to the central  
2 reservations call center.

3 18. Plaintiffs are informed and believe and on that ground allege that Defendants'  
4 employees and agents at the central reservations call center were directed, trained, and instructed  
5 to, and did, record and/or monitor telephone calls between the central reservations call center and  
6 callers, including California callers.

7 19. During the period 2011 through early 2012, Plaintiff Laura McCabe ("McCabe")  
8 called 1-888-211-9874 from California using her cellular telephone. McCabe called 1-888-211-  
9 9874 to inquire about hotel rates and/or to make reservations. Accordingly, during her telephone  
10 calls with Defendants, McCabe shared sensitive personal information with Defendants, including  
11 her name and/or credit card information.

12 20. From February through July 2011 and in September 2011, Plaintiff Latroya  
13 Simpson ("Simpson") called 1-888-HOLIDAY from California using her cellular telephone.  
14 Simpson called 1-888-HOLIDAY to inquire about hotel rates and/or to make reservations.  
15 Accordingly, during her telephone calls with Defendants, Simpson shared sensitive personal  
16 information with Defendants, including her name and/or credit card information.

17 21. During Plaintiffs' telephone calls to Defendants, Defendants failed to disclose to  
18 Plaintiffs that their telephone conversations with Defendants were being recorded and/or  
19 monitored. Plaintiffs did not give and could not have given consent for the telephone calls to be  
20 recorded or monitored because they were unaware that Defendants were engaged in that practice  
21 during the telephone calls. Plaintiffs are informed and believe and on that ground allege that  
22 callers who called or were routed to the toll-free reservation telephone numbers were not  
23 informed by Defendants or anyone else that their calls were being recorded and/or monitored.  
24 Thus, that recording and/or monitoring necessarily occurred without the callers' knowledge or  
25 consent.

26 22. Because there was no warning that calls would be recorded or monitored,  
27 ~~Plaintiffs had a reasonable expectation that their telephone conversations with Defendants'~~  
28 employees and agents were, and would remain, private and confined to the parties on the

1 telephone. That recording and/or monitoring without their consent is highly offensive to  
2 Plaintiffs and would be highly offensive to a reasonable person, including members of the  
3 proposed Plaintiff Class.

4 **CLASS ACTION ALLEGATIONS**

5 23. Plaintiffs bring this action under California Code of Civil Procedure § 382 on  
6 behalf of themselves and the class (the "Class") defined as follows:

7 All California residents who, at any time during the applicable limitations period  
8 preceding the filing of this Complaint through the date of resolution, participated in one  
9 or more telephone conversations with the Holiday Inn toll-free reservation telephone  
10 numbers from a cellular or cordless telephone located in California and whose calls with  
11 the Holiday Inn toll-free reservation telephone numbers were recorded and/or monitored  
12 by Defendants surreptitiously or without disclosure.

13  
14 24. The Class Plaintiffs seek to represent contains numerous members and is clearly  
15 ascertainable including, without limitation, by using the Defendants' records and/or Defendants'  
16 telephone company's or other toll-free service provider's records regarding calls to the toll-free  
17 reservation telephone numbers to determine the size of the Class and to determine the identities  
18 of individual Class members. Plaintiffs reserve the right under Rule 3.765 of the California  
19 Rules of Court to amend or modify the Class definitions or to add subclasses or limitations to  
20 particular issues.

21 25. By their unlawful actions, Defendants have violated Plaintiffs' and the Class's  
22 privacy rights under California's Invasion of Privacy Act, California Penal Code §§ 630 *et seq.*  
23 The questions raised are, therefore, of common or general interest to the Class members, who  
24 have a well-defined community of interest in the questions of law and fact raised in this action.

25 26. Plaintiffs' claims are typical of those of the Class, as Plaintiffs now suffer from  
26 the same violations of the law as other putative Class members. Plaintiffs have retained counsel  
27 with substantial experience in prosecuting complex litigation and class actions to represent them  
28 and the Class, and Plaintiffs will fairly and adequately represent the interests of the Class.



1           27. This action may properly be maintained as a class action under Code of Civil  
2 Procedure § 382 because there is a well-defined community of interest in the litigation and the  
3 proposed Class is ascertainable.

4 **Numerosity**

5           28. Based on information and belief, the Class consists of at least seventy-five  
6 individuals, making joinder of individual cases impracticable.

7 **Typicality**

8           29. Plaintiffs' claims are typical of the claims of all of the other members of the  
9 Class. Plaintiffs' claims and the Class members' claims are based on the same legal theories and  
10 arise from the same unlawful conduct, resulting in the same injury to Plaintiffs and to all of the  
11 other Class members.

12 **Common Questions of Law and Fact**

13           30. There are questions of law and fact common to the Class that predominate over  
14 any questions affecting only individual Class members. Those common questions of law and  
15 fact include, without limitation, the following:

- 16           a. Whether Defendants have a policy or practice of recording and/or  
17 intercepting telephone calls made to the Holiday Inn toll-free reservation  
18 telephone numbers;
- 19           b. Whether Defendants have a policy or practice of not disclosing to callers  
20 whose calls are recorded and/or intercepted that their conversations with  
21 the Holiday Inn toll-free reservation telephone numbers would be recorded  
22 and/or monitored;
- 23           c. Whether Defendants have a policy or practice of not obtaining callers'  
24 consent to record and/or monitor telephone calls made to the Holiday Inn  
25 toll-free reservation telephone numbers;
- 26           d. Whether Defendants violated California Penal Code § 632.7 by recording  
27 ~~and/or monitoring telephone conversations between callers and the~~



1 Holiday Inn toll-free reservation telephone numbers surreptitiously and  
2 without disclosure;

3 e. Whether Class members are entitled to statutory damages of \$5,000 under  
4 Penal Code § 637.2 for every violation of Penal Code § 632.7.

5 Adequacy

6 31. Plaintiffs will fairly and adequately represent and protect the interests of the other  
7 members of the Class. Plaintiffs have retained counsel with substantial experience in  
8 prosecuting complex litigation and class actions. Plaintiffs and their counsel are committed to  
9 prosecuting this action vigorously on behalf of the other Class members and have the financial  
10 resources to do so. Neither Plaintiffs nor their counsel have any interests adverse to those of the  
11 other Class members.

12 Superiority

13 32. A class action is superior to other available methods for the fair and efficient  
14 adjudication of this controversy because individual litigation of the claims of all Class members  
15 is impracticable and questions of law and fact common to the Class predominate over any  
16 questions affecting only individual members of the Class. Even if every individual Class  
17 member could afford individual litigation, the court system could not. It would be unduly  
18 burdensome to the courts if individual litigation of the numerous cases were to be required.  
19 Individualized litigation also would present the potential for varying, inconsistent, or  
20 contradictory judgments and would magnify the delay and expense to all parties and to the court  
21 system resulting from multiple trials of the same factual issues. By contrast, the conduct of this  
22 action as a class action with respect to some or all of the issues will present fewer management  
23 difficulties, conserve the resources of the court system and the parties and protect the rights of  
24 each Class member. Further, it will prevent the very real harm that would be suffered by  
25 numerous putative Class members who simply will be unable to enforce individual claims of this  
26 size on their own, and by Defendants' competitors, who will be placed at a competitive  
27 disadvantage as their reward for obeying the law. Plaintiffs anticipate no difficulty in the  
28 management of this case as a class action.

35. Defendants have acted or refused to act in respects generally applicable to the Class, thereby making appropriate final and injunctive relief or corresponding declaratory relief with regard to members of the Class as a whole as requested herein. Likewise, Defendants' conduct as described above is unlawful, is capable of repetition, and will continue unless restrained and enjoined by the Court.

### Unlawful Recording and Intercepting of Communications against All Defendants

36. Plaintiffs incorporate each allegation set forth above as if fully set forth herein and further alleges as follows.

37. Each of Plaintiffs participated in at least one telephone call that she made from California with Defendants' employees or agents at the Holiday Inn toll-free reservation telephone numbers and each is informed and believes that she initiated it through a call to the toll-free reservation telephone numbers. Each of Plaintiffs used a cellular telephone to engage in the conversations.

38. Plaintiffs are informed and believe and, on that ground allege that, at all relevant times, Defendants had a policy and practice of using a telephone system that enabled them to surreptitiously record and/or monitor conversations between Plaintiffs and Class members using cellular or cordless telephones and the Holiday Inn toll-free reservation telephone numbers.

39. Plaintiffs are informed and believe and on that ground allege that Defendants had ~~and followed a policy and practice of intentionally and surreptitiously recording and/or~~ monitoring Plaintiffs' and Class members' cellular and cordless telephone conversations with the

1 Holiday Inn toll-free reservation telephone numbers.

2 40. Plaintiffs are informed and believe and on that ground allege that Defendants had  
3 and followed a policy and practice of not advising or warning Plaintiffs or Class members that  
4 their cellular and cordless telephone communications with the Holiday Inn toll-free reservation  
5 telephone numbers would be recorded and/or monitored. Because Defendants did not disclose to  
6 Plaintiffs or Class members that their calls were being recorded and/or monitored, Defendants  
7 did not obtain, and could not have obtained, Plaintiffs' or Class members' express or implied  
8 advance consent to the recording or monitoring of those conversations. As a result, Plaintiffs  
9 and Class members had an objectively reasonable expectation that their calls were not being  
10 recorded and/or monitored. That expectation and its objective reasonableness arise, in part, from  
11 the objective offensiveness of surreptitiously recording people's conversations, the absence of  
12 even a simple pre-recorded message as short as four simple words – "calls may be recorded" –  
13 and the ease with which such a message could have been put in place. As the California  
14 Supreme Court has stated, "in light of the circumstance that California consumers are  
15 accustomed to being informed at the outset of a telephone call whenever a business entity intends  
16 to record the call, it appears equally plausible that, in the absence of such an advisement, a  
17 California consumer reasonably would anticipate that such a telephone call is not being recorded,  
18 particularly in view of the strong privacy interest most persons have with regard to the personal  
19 financial information frequently disclosed in such calls." (*See Kearney v. Salomon Smith Barney*  
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21 41. Defendants' conduct as described above violated California Penal Code §  
22 632.7(a). Under Penal Code § 632.2, Plaintiffs and Class members therefore are entitled to  
23 \$5,000 in statutory damages per violation, even in the absence of proof of actual damages, the  
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25 entitled to injunctive relief to enjoin further violations.

26

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3 PRAYER FOR RELIEF

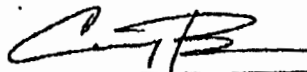
4 WHEREFORE, Plaintiffs, on behalf of themselves and members of the Class, pray for  
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- 6 a. An order certifying the Class and appointing Plaintiffs representatives of the  
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10 c. A judgment for and award of statutory damages to Plaintiffs and the members of  
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13 engaging in further conduct in violation of California Penal Code § 630, *et seq*;  
14 e. Payment of costs of the suit;  
15 f. Payment of attorneys' fees under California Code of Civil Procedure § 1021.5;  
16 g. An award of pre- and post-judgment interest to the extent allowed by law; and  
17 h. For such other or further relief as the Court may deem proper.

18  
19 Respectfully submitted,

20 Dated: July 20, 2012

KELLER GROVER LLP

21  
22 

23 Carey G. Beon  
24 Attorneys for Plaintiffs  
25  
26  
27  
28

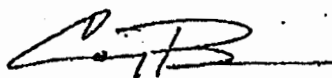


**JURY DEMAND**

Plaintiffs request a trial by jury of all claims that can be so tried.

Respectfully submitted,

**KELLER GROVER LLP**



Carey G. Been  
Attorneys for Plaintiffs

Dated: July 20, 2012

ENDORSED  
FILED  
ALAMEDA COUNTY

||| 20 2012

CLERK OF THE SUPERIOR COURT  
By J. DE JESUS Deputy

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11 Attorneys for Plaintiffs

12 LAURA MCCABE and LATROYA SIMPSON

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 IN AND FOR THE COUNTY OF ALAMEDA

15 LAURA MCCABE and LATROYA  
16 SIMPSON, individually and on behalf of a  
17 class of similarly situated individuals,

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20 INTERCONTINENTAL HOTELS GROUP  
21 RESOURCES, INC.; INTERCONTINENTAL  
22 HOTELS OF SAN FRANCISCO, INC.; SIX  
23 CONTINENTS HOTELS, INC.; and DOES 2  
24 through 10, inclusive,

25 Defendants.

Case No: RG12637671

CLASS ACTION

AMENDMENT TO COMPLAINT

DEMAND FOR JURY TRIAL

26  
27  
28  
AMENDMENT TO COMPLAINT

2/ FAX



# EXHIBIT C



# SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):

INTERCONTINENTAL HOTELS GROUP RESOURCES, INC.;  
see attached ADDITIONAL PARTIES ATTACHMENT attached

YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

LAURA MCCABE and LATROYA SIMPSON, individually and on  
behalf of a class of similarly situated individuals,

SUM-100

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

ENDORSED  
FILED  
ALAMEDA COUNTY

JUL - 8 2012

CLERK OF THE SUPERIOR COURT  
By: *Guillermo Barrio* Deputy

NOTICE: You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case, there may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouses nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTICE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The courts can make be paid before the court will dismiss this case. (AVISO) Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegerá. Su respuesta por escrito tiene que estar en formato legal correcto al tiempo que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida el secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a retener las cuotas y los costos extras por disponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desahogar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Alameda County Superior Court  
1225 Fallon Street, Oakland, CA 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Eric A. Grover (SBN 136080), KELLER GROVER LLP, 1965 Market St., San Francisco, CA (415)343-1305

DATE:  
(Fecha)

JUL - 8 - 2012

Pat S. Sweeton

Clerk, by  
(Secretario)

*Guillermo Barrio*

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

(SAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 418.10 (corporation)

☐ CCP 418.20 (defunct corporation)

☐ CCP 418.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 418.80 (minor)

☐ CCP 418.70 (conservatee)

☐ CCP 418.90 (authorized person)

Form Adopted for Mandatory Use  
Judicial Council of California  
SUM-100 (Rev. July 1, 2009)

SUMMONS

Page 1 of 1  
Code of Civil Procedure §§ 418.30, 418.31  
[www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)

SUM-200(A)

SHORT TITLE: McCabe, et al. vs. Intercontinental	CASE NUMBER:
---	--------------

## INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff ☒ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

INTERCONTINENTAL HOTELS OF SAN FRANCISCO, INC.; and DOES 1 through 10, inclusive,

Page 1 of 1

Page 1 of 1

**Amended**  
**SUMMONS**  
**(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

**INTERCONTINENTAL HOTELS GROUP RESOURCES, INC.;**  
 see attached **ADDITIONAL PARTIES ATTACHMENT** attached

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

**LAURA MCCABE and LATROYA SIMPSON, individually and on behalf of a class of similarly situated individuals,**

**FILED**  
**ALAMEDA COUNTY**  
 JUL 20 2012  
**CLERK OF THE SUPERIOR COURT**  
**By J. DE JESUS Deputy**

**NOTICE:** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to tell an attorney refusal service, if you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**AVISO:** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto al caso que procesen en su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a retener las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desahogar el caso.

The name and address of the court is:  
 (El nombre y dirección de la corte es):

Alameda County Superior Court  
 1225 Fallon Street, Oakland, CA 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
 (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Eric A. Grover (SBN 136080), KELLER GROVER LLP, 1965 Market St., San Francisco, CA (415)343-1305

DATE: JUL 20, 2012  
 (Fecha)

**RAY S. SWEETEN**

Clerk, by  
 (Secretario):

**J. DE JESUS**

Deputy  
 (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
 (Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
- under: ☐ COP 416.10 (corporation) ☐ COP 416.60 (minor)
- ☐ COP 416.20 (defunct corporation) ☐ COP 416.70 (conservatee)
- ☐ COP 416.40 (association or partnership) ☐ COP 416.90 (authorized person)
- ☐ other (specify):
4. ☐ by personal delivery on (date):

Form Adopted for Mandatory Use  
 Judicial Council of California  
 JWS-V08 (Rev. July 1, 2009)

**SUMMONS**

Page 1 of 1  
 Code of Civil Procedure §§ 412.20, 483  
[www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)

SUM-200(A)

<b>SHORT TITLE:</b> McCabe, et al. vs. Intercontinental	<b>CASE NUMBER:</b> RG12637671
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**INSTRUCTIONS FOR USE**

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff
 ☒ Defendant
 ☐ Cross-Complainant
 ☐ Cross-Defendant

INTERCONTINENTAL HOTELS OF SAN FRANCISCO, INC.; SIX CONTINENTS HOTELS, INC.; and  
DOBS 2 through 10, inclusive,

Page 1 of 1  
Page 1 of 1



# EXHIBIT D

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  <b>Eric A. Grover, Esq. (SBN 136080)</b>  <b>KELLER GROVER LLP</b>  <b>1965 Market Street</b>  <b>San Francisco, CA 94103</b></p> <p>TELEPHONE NO: <b>(415)543-1305</b> FAX NO. (Optional): <b>(415)543-7861</b>  E-MAIL ADDRESS (Optional): <b>ea grover@kellergrover.com</b>  ATTORNEY FOR (Name): <b>Plaintiffs LAURA McCABE &amp; LATROYA SIMPSON</b></p>	<p>FOR COURT USE ONLY</p>
<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA</b>  STREET ADDRESS: <b>1225 Fallon Street</b>  MAILING ADDRESS:  CITY AND ZIP CODE: <b>Oakland, CA 94612</b>  BRANCH NAME: <b>Rene C. Davidson Courthouse</b></p>	
<p>PLAINTIFF/PETITIONER: <b>LAURA McCABE, et al.</b>  DEFENDANT/RESPONDENT: <b>INTERCONTINENTAL HOTELS GROUP, et al.</b></p>	
<p><b>NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL</b></p>	<p>CASE NUMBER:  <b>RG12637671</b></p>

**NOTICE**

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF  
ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

POS-015

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Eric A. Grover, Esq. (SBN 136080)</b> <b>KELLER GROVER LLP</b> <b>1965 Market Street</b> <b>San Francisco, CA 94103</b>  TELEPHONE NO.: (415)543-1305 FAX NO. (Optional): (415)543-7861 E-MAIL ADDRESS (Optional): <b>egrover@kellergrover.com</b> ATTORNEY FOR (Name): <b>Plaintiffs LAURA McCABE &amp; LATROYA SIMPSON</b>	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: <b>1225 Fallon Street</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>Oakland, CA 94612.</b> BRANCH NAME: <b>Rene C. Davidson Courthouse</b>	
PLAINTIFF/PETITIONER: <b>LAURA McCABE, et al.</b> DEFENDANT/RESPONDENT: <b>INTERCONTINENTAL HOTELS GROUP, et al.</b>	
<b>NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL</b>	CASE NUMBER: <b>RG12637671</b>

 TO (Insert name of party being served): INTERCONTINENTAL HOTELS OF SAN FRANCISCO, INC.

<p align="center"><b>NOTICE</b></p> <p>The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.</p> <p>If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.</p>
--

Date of mailing: August 17, 2012

Ann M. Stanton

(TYPE OR PRINT NAME)



(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

**ACKNOWLEDGMENT OF RECEIPT**

This acknowledges receipt of (to be completed by sender before mailing):

1. ☐ A copy of the summons and of the complaint.2. ☒ Other (specify):

1) Civil Case Cover Sheet; 2) Summons; 3) Amended Summons; 4) Complaint for Damages and Injunctive Relief; 5) First Amended Complaint for Damages and Injunctive Relief; 6) Amendment to Complaint; 7) ADR Information Packet; 8) [blank] ADR Stipulation; 9) Notice of Hearing; and 10) Order.

(To be completed by recipient):

Date this form is signed: August 30, 2012

Edward D. Totino for

Intercontinental Hotels of San Francisco,

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY, ON WHOSE BEHALF THIS FORM IS SIGNED)

Inc.



(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  <b>Eric A. Grover, Esq. (SBN 136080)</b>  <b>KELLER GROVER LLP</b>  <b>1965 Market Street</b>  <b>San Francisco, CA 94103</b></p> <p>TELEPHONE NO.: (415)543-1305      FAX NO. (Optional): (415)543-7861  E-MAIL ADDRESS (Optional): <b>ea grover@kellergrover.com</b>  ATTORNEY FOR (Name): <b>Plaintiffs LAURA McCABE &amp; LATROYA SIMPSON</b></p>	<p>FOR COURT USE ONLY</p>
<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA</b>  STREET ADDRESS: <b>1225 Fallon Street</b>  MAILING ADDRESS:  CITY AND ZIP CODE: <b>Oakland, CA 94612</b>  BRANCH NAME: <b>Rene C. Davidson Courthouse</b></p>	
<p>PLAINTIFF/PETITIONER: <b>LAURA McCABE, et al.</b>  DEFENDANT/RESPONDENT: <b>INTERCONTINENTAL HOTELS GROUP, et al.</b></p>	
<p><b>NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL</b></p>	<p>CASE NUMBER:  <b>RG12637671</b></p>

**NOTICE**

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

### Ann M. Stanton

TYPE OR PRINT NAME)

(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

**This acknowledges receipt of (to be completed by sender before mailing):**

1. ☐ A copy of the summons and of the complaint.

2. ☒ Other (specify):

1) Civil Case Cover Sheet; 2) Summons; 3) Amended Summons; 4) Complaint for Damages and Injunctive Relief; 5) First Amended Complaint for Damages and Injunctive Relief; 6) Amendment to Complaint; 7) ADR Information Packet; 8) [blank] ADR Stipulation; 9) Notice of Hearing; and 10) Order.

**(To be completed by recipient):**

Date this form is signed: August 30, 2012

Edward D. Totino for  
Six Continents Hotels, Inc.

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,  
ON WHOSE BEHALF THIS FORM IS SIGNED)

(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF  
ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)



# EXHIBIT E



## Superior Court of California, County of Alameda Alternative Dispute Resolution (ADR) Information Packet

The person who files a civil lawsuit (plaintiff) must include the ADR Information Packet with the complaint when serving the defendant. Cross complainants must serve the ADR Information Packet on any new parties named to the action.

The Court *strongly encourages* the parties to use some form of ADR before proceeding to trial. You may choose ADR by:

- Indicating your preference on Case Management Form CM-110;
- Filing the Stipulation to ADR and Delay Initial Case Management Conference for 90 Days (a local form included with the information packet); or
- Agree to ADR at your Initial Case Management Conference.

**QUESTIONS?** Call (510) 891-6055, Email [adrprogram@alameda.courts.ca.gov](mailto:adrprogram@alameda.courts.ca.gov)  
Or visit the court's website at <http://www.alameda.courts.ca.gov/adr>

### What Are The Advantages Of Using ADR?

- *Faster* – Litigation can take years to complete but ADR usually takes weeks or months.
- *Cheaper* – Parties can save on attorneys' fees and litigation costs.
- *More control and flexibility* – Parties choose the ADR process appropriate for their case.
- *Cooperative and less stressful* – In mediation, parties cooperate to find a mutually agreeable resolution.
- *Preserve Relationships* – A mediator can help you effectively communicate your interests and point of view to the other side. This is an important benefit when you want to preserve a relationship.

### What Is The Disadvantage Of Using ADR?

- *You may go to court anyway* – If you cannot resolve your dispute using ADR, you may still have to spend time and money resolving your lawsuit through the courts.

### What ADR Options Are Available?

- *Mediation* – A neutral person (mediator) helps the parties communicate, clarify facts, identify legal issues, explore settlement options, and agree on a solution that is acceptable to all sides.
  - **Court Mediation Program:** Mediators do not charge fees for the first two hours of mediation. If parties need more time, they must pay the mediator's regular fees.

Some mediators ask for a deposit before mediation starts which is subject to a refund for unused time.

- **Private Mediation:** This is mediation where the parties pay the mediator's regular fees and may choose a mediator outside the court's panel.
- **Arbitration** – A neutral person (arbitrator) hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial and the rules of evidence are often relaxed. Arbitration is effective when the parties want someone other than themselves to decide the outcome.
- **Judicial Arbitration Program (non-binding):** The judge can refer a case or the parties can agree to use judicial arbitration. The parties select an arbitrator from a list provided by the court. If the parties cannot agree on an arbitrator, one will be assigned by the court. There is no fee for the arbitrator. The arbitrator must send the decision (award of the arbitrator) to the court. The parties have the right to reject the award and proceed to trial.
- **Private Arbitration (binding and non-binding)** occurs when parties involved in a dispute either agree or are contractually obligated. This option takes place outside of the courts and is normally binding meaning the arbitrator's decision is final.

#### **Mediation Service Programs In Alameda County**

Low cost mediation services are available through non-profit community organizations. Trained volunteer mediators provide these services. Contact the following organizations for more information:

##### **SEEDS Community Resolution Center**

1968 San Pablo Avenue, Berkeley, CA 94702-1612

Telephone: (510) 548-2377 Website: [www.seedscro.org](http://www.seedscro.org)

Their mission is to provide mediation, facilitation, training and education programs in our diverse communities -- Services that Encourage Effective Dialogue and Solution-making.

##### **Center for Community Dispute Settlement**

291 McLeod Street, Livermore, CA 94550

Telephone: (925) 373-1035 Website: [www.trivalleymediation.com](http://www.trivalleymediation.com)

CCDS provides services in the Tri-Valley area for all of Alameda County.

##### **For Victim/Offender Restorative Justice Services**

Catholic Charities of the East Bay, Oakland

433 Jefferson Street, Oakland, CA 94607

Telephone: (510) 768-3100 Website: [www.cceb.org](http://www.cceb.org)

Mediation sessions involve the youth, victim, and family members work toward a mutually agreeable restitution agreement.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number, and address)  TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR: _____ SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____		ALA ADR-001 FOR COURT USE ONLY
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:		CASE NUMBER:
<b>STIPULATION TO ATTEND ALTERNATIVE DISPUTE RESOLUTION (ADR)          AND DELAY INITIAL CASE MANAGEMENT CONFERENCE FOR 90 DAYS</b>		

**INSTRUCTIONS:** All applicable boxes must be checked, and the specified information must be provided.

This stipulation is effective when:

- ▶ All parties have signed and filed this stipulation with the Case Management Conference Statement at least 15 days before this initial case management conference.
- A copy of this stipulation has been received by the ADR Program Administrator, 1228 Fallon Street, Oakland, CA 94612.

1. Date complaint filed: \_\_\_\_\_ An Initial Case Management Conference is scheduled for:

Date: \_\_\_\_\_ Time: \_\_\_\_\_ Department: \_\_\_\_\_

2. Counsel and all parties certify they have met and conferred and have selected the following ADR process (check one):

- ☐ Court mediation      ☐ Judicial arbitration  
☐ Private mediation      ☐ Private arbitration

3. All parties agree to complete ADR within 90 days and certify that:

- a. No party to this case has requested a complex civil litigation determination hearing;
- b. All parties have been served and intend to submit to the jurisdiction of the court;
- c. All parties have agreed to a specific plan for sufficient discovery to make the ADR process meaningful;
- d. Copies of this stipulation and self-addressed stamped envelopes are provided for returning endorsed filed stamped copies to counsel and all parties;
- e. Case management statements are submitted with this stipulation;
- f. All parties will attend ADR conferences; and,
- g. The court will not allow more than 90 days to complete ADR.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
 (TYPE OR PRINT NAME)      (SIGNATURE OF PLAINTIFF)

Date: \_\_\_\_\_

\_\_\_\_\_  
 (TYPE OR PRINT NAME)      (SIGNATURE OF ATTORNEY FOR PLAINTIFF)

Form Approved for Mandatory Use  
 Superior Court of California,  
 County of Alameda  
 ALA ADR-001 (New January 1, 2010)

**STIPULATION TO ATTEND ALTERNATIVE DISPUTE RESOLUTION (ADR)  
 AND DELAY INITIAL CASE MANAGEMENT CONFERENCE FOR 90 DAYS**

Cal. Rules of Court,  
 rule 3.221(a)(3)



ALA ADR-001

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER.:
--	---------------

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF DEFENDANT)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF ATTORNEY FOR DEFENDANT)

# EXHIBIT F

Keller Grover LLP  
 Attn: Grover, Eric A.  
 1965 Market Street  
 San Francisco, CA 94103

Intercontinental Hotels Group  
 Resources, Inc.

**Superior Court of California, County of Alameda  
 Rene C. Davidson Alameda County Courthouse**

McCabe

Plaintiff/Petitioner(s)

vs.

Intercontinental Hotels Group Resources, Inc.

Defendant/Respondent(s)

(Abbreviated Title)

No. RG12637671

**NOTICE OF HEARING**

To each party or to the attorney(s) of record for each party herein:  
 Notice is hereby given that the above-entitled action has been set for:  
 Complex Determination Hearing  
 Case Management Conference

You are hereby notified to appear at the following Court location on the date and time noted below:

**Complex Determination Hearing:**

DATE: 08/14/2012 TIME: 08:45 AM DEPARTMENT: 21  
 LOCATION: Administration Building, Fourth Floor  
 1221 Oak Street, Oakland

**Case Management Conference:**

DATE: 09/14/2012 TIME: 08:30 AM DEPARTMENT: 21  
 LOCATION: Administration Building, Fourth Floor  
 1221 Oak Street, Oakland

Pursuant to California Rules of Court, Rule 3.400 et seq. and Local Rule 3.250 (Unified Rules of the Superior Court, County of Alameda), the above-entitled matter is set for a Complex Litigation Determination Hearing and Initial Complex Case Management Conference.

Department 21 issues tentative rulings on DomainWeb ([www.alameda.courts.ca.gov/domainweb](http://www.alameda.courts.ca.gov/domainweb)). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 267-6937. Please consult Rule 3.30(e) of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 21.

Counsel or party requesting complex litigation designation is ordered to serve a copy of this notice on all parties omitted from this notice or brought into the action after this notice was mailed.

All counsel of record and any unrepresented parties are ordered to attend this Initial Complex Case Management Conference unless otherwise notified by the Court.

Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions. Case Management Statements may be filed by E-Delivery, by emailing them to the following address:

[EDelivery@alameda.courts.ca.gov](mailto:EDelivery@alameda.courts.ca.gov). No fee is charged for this service. For further information,

go to Direct Calendar Departments at <http://apps.alameda.courts.ca.gov/domauiweb>.

All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 21.

If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 21 by e-mail at [Dept.21@alameda.courts.ca.gov](mailto:Dept.21@alameda.courts.ca.gov) or by phone at (510) 267-6937.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 07/09/2012

Executive Officer / Clerk of the Superior Court

By



Date

Deputy Clerk

**CLERK'S CERTIFICATE OF MAILING**

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 07/09/2012.

By



Date

Deputy Clerk



# **EXHIBIT G**

Keller Grover LLP  
 Attn: Grover, Eric A.  
 1965 Market Street  
 San Francisco, CA 94103

**Superior Court of California, County of Alameda**  
**Rene C. Davidson Alameda County Courthouse**

McCabe

Plaintiff/Petitioner(s)

vs.

Intercontinental Hotels Group Resources, Inc.

Defendant/Respondent(s)

(Abbreviated Title)

No. RG12637671

Order

Complaint Business Tort/Unfair Business Practice

The Complex Determination Hearing was set for hearing on 08/14/2012 at 08:45 AM in Department 21 before the Honorable Wynne Carvill. The Tentative Ruling was published and has not been contested.

**IT IS HEREBY ORDERED THAT:**

The tentative ruling is affirmed as follows: The Court designates this case as complex pursuant to Rule 3.400 et seq. of the California Rules of Court. The matter is assigned for all purposes including trial to Department 21 of the Alameda County Superior Court. Counsel are advised to be familiar with the Alameda County Local Rules concerning complex litigation, including Rule 3.250 et seq.

**COMPLEX CASE FEES**

Pursuant to Government Code section 70616, any non-exempt party who has appeared in the action but has not paid the complex case fee is required to pay the fee within ten days of the filing of this order. The complex case fee is \$1,000 for each plaintiff or group of plaintiffs appearing together and \$1,000 PER PARTY for each defendant, intervenor, respondent or other adverse party, whether filing separately or jointly, up to a maximum of \$18,000 for all adverse parties. All payments must identify on whose behalf the fee is submitted. Please submit payment to the attention of the Complex Litigation Clerk located in the Civil Division at the René C. Davidson Courthouse, 1225 Fallon Street, Oakland, CA 94612. Please make check(s) payable to the Clerk of the Superior Court. Documents may continue to be filed as allowed under Local Rule 1.9.

**PROCEDURES**

Calendar information, filings, and tentative rulings are available to the public at <http://www.alameda.courts.ca.gov/domainweb/>. All counsel are expected to be familiar and to comply with pertinent provisions of the Code of Civil Procedure, the California Rules of Court, the Alameda County Superior Court Local Rules, and the protocols set forth on the Court's website for Department 21.

All motions and ex parte applications shall be noticed for hearing in Department 21. The parties shall reserve hearing dates and times by contacting the Department 21 courtroom clerk via email at [Dept.21@alameda.courts.ca.gov](mailto:Dept.21@alameda.courts.ca.gov). The courtroom clerk can also be contacted by phone at (510) 267-6937, but phone contact should be used very sparingly. E-mail is the preferred method of communication.

Courtesy (bench) copies of all filings should be delivered directly to Dept. 21 and may be left in the

Order

drop box when court is in session. The Court may also direct that certain filings be supplemented by an electronic copy (via e-mail to Dept.21@alameda.courts.ca.gov or by CD-ROM lodged with the clerk in Dept. 21). Any such electronic copy of documents shall be in Microsoft Word readable form (Microsoft Word, Word Perfect, a TIF or JPEG file inserted into a Word file, or any other format that can be saved in a Microsoft Word document). Each separate document (notice, points and authorities, declarations, requests for judicial notice, et al) must be in a separate file in the diskette and the computer files must be identified in a fashion to permit accurate identification by Court personnel (e.g. "Notice.doc," "Points and Authorities.doc," "Li Declaration.doc," "Johnson Declaration.doc," and "Proof of Service.doc," NOT "Qnashnot.doc," "briefdraft3.doc," "Defdecl.doc," "Decl2revised.doc," or "Form5.doc.") Electronic media submitted will not be returned.

#### CASE MANAGEMENT

At the Initial CCMC, the parties must be prepared to discuss at length the nature of the case, both factually and legally, as well as the projected management of the case at each stage. This is not a perfunctory exercise. The primary objective of the CCMC is to develop a comprehensive plan for a just, speedy and economical determination of the litigation.

Case Management Statements may be filed by E-Delivery, by emailing them to the following address: EDelivery@alameda.courts.ca.gov. No fee is charged for this service. For further information, go to Direct Calendar Departments at <http://apps.alameda.courts.ca.gov/domainweb>. However, courtesy copies of statements must be delivered directly to Dept. 21. The filing and delivery date is not later than five court days before the conference.

The Court strongly prefers joint CCMC statements prepared in narrative form, and not using Form CM-110, after counsel have met and conferred as required by CRC 3.724. CCMC statements must address the following issues when applicable:

- A. A brief factual summary to assist the Court in understanding the background of the case, a statement of the issues presented, including each theory of liability and defense and a summary of the facts supporting each position taken, and the relief sought, including an estimate of damages.
- B. The number of parties and their posture, including a proposed structure of representation, (e.g., liaison/lead counsel or by committee) if applicable;
- C. Deadlines and limits on joinder of parties and amended or additional pleadings;
- D. Class discovery and class certification;
- E. A proposed schedule for the conduct of the litigation including, but not limited to, a discovery plan, a plan for hearing remaining law and motion, and a projected trial date;
- F. An identification of all potential evidentiary issues involving confidentiality or protected evidence;
- G. A detailed description of the procedural posture of the case, describing any outstanding procedural problems, including, but not limited to:
  - (1) unserved parties and the reasons for the failure to serve;
  - (2) unserved and/or unfiled cross-complaints;
  - (3) related actions pending in any jurisdiction and the potential for coordination or consolidation;
  - (4) any possible jurisdictional or venue issues that may arise;
  - (5) the status of discovery, including a description of all anticipated discovery and incomplete or disputed discovery issues;
  - (6) unresolved law and motion matters;
  - (7) requests for, or opposition to, any ADR proceedings, including but not limited to mediation,

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Order

judicial or contractual arbitration;

(8) severance of issues for trial; and

(9) calendar conflicts for any attorney, witness, or party, and any other matter which may affect the setting of a trial date.

H. Counsel may make suggestions for streamlining the litigation, including, but not limited to, a master file system, designation of lead counsel [for plaintiff(s) and/or defendant(s)] to streamline service of process and/or management of discovery, the use of e-filing, and the use of a web-page maintained by lead counsel for the purpose of posting the litigation schedule and agenda.

#### SERVICE OF THIS ORDER

Counsel for plaintiff(s) shall have a continuing obligation to serve a copy of this order on newly joined parties defendant not listed on the proof of service of this order and file proof of service. Each party defendant joining any third party cross-defendant shall have a continuing duty to serve a copy of this order on newly joined cross-defendants and to file proof of service.

Dated: 08/14/2012

*Wynne Carvill*  
\_\_\_\_\_  
Judge Wynne Carvill

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Order



Superior Court of California, County of Alameda  
Rene C. Davidson Alameda County Courthouse

Case Number: RG12637671  
Order After Hearing Re: of 08/14/2012

**DECLARATION OF SERVICE BY MAIL**

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 08/16/2012.

Executive Officer / Clerk of the Superior Court

By *Alicia Williams*  
Deputy Clerk

# **EXHIBIT H**

1 ERIC A. GROVER (SBN 136080)  
eagrover@kellergrover.com  
2 RACHAEL G. JUNG (SBN 239323)  
rjung@kellergrover.com  
3 **KELLER GROVER LLP**  
1965 Market Street  
4 San Francisco, California 94103  
Telephone: (415) 543-1305  
5 Facsimile: (415) 543-7861

6 SCOT BERNSTEIN (SBN 94915)  
swampadero@sbernsteinlaw.com  
7 **LAW OFFICES OF SCOT D. BERNSTEIN,**  
**A PROFESSIONAL CORPORATION**  
8 101 Parkshore Drive, Suite 100  
Polsom, California 95630  
9 Telephone: (916) 447-0100  
Fax: (916) 933-5533

10  
11 Attorneys for Plaintiffs  
LAURA MCCABE and LATROYA SIMPSON  
12

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **IN AND FOR THE COUNTY OF ALAMEDA**  
15

16 LAURA MCCABE and LATROYA  
SIMPSON, individually and on behalf of a  
17 class of similarly situated individuals,

18 Plaintiffs,

19 v.

20 INTERCONTINENTAL HOTELS GROUP  
RESOURCES, INC.; INTERCONTINENTAL  
21 HOTELS OF SAN FRANCISCO, INC.; and  
DOES 1 through 10, inclusive,

22 Defendants.  
23  
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Case No: RG12637671

**PLAINTIFF'S CASE MANAGEMENT  
CONFERENCE STATEMENT**

Date: September 14, 2012  
Time: 8:30 a.m.  
Dept: 17

The Hon. Steven A. Brick

Complaint Filed: July 3, 2012  
FAC Filed: July 23, 2012

1 Plaintiff Laura McCabe ("Plaintiff") hereby requests a continuance of the initial Case  
2 Management Conference set for September 14, 2012. The Complaint, along with a Notice  
3 and Acknowledgment, was mailed to Defendants' counsel on August 17, 2012. Defendants'  
4 responsive pleadings are not due until late September or early October. Plaintiff requests  
5 that the Court reset the CMC for a date in late October or early November so that the CMC  
6 takes place after the date that Defendants must appear in the action.

7 Dated: August 27, 2012.

Respectfully submitted,

8 **KELLER GROVER LLP**

9  
10  
11 By: 

ERIC A. GROVER

12 RACHAEL G. JUNG

13 Attorneys for Plaintiff and the Proposed Class  
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1 I, Ann M. Stanton, am employed in the County of San Francisco, State of California. I am  
 2 over the age of eighteen and not a party to the within action. My business address is 1965 Market  
 3 Street, San Francisco, California 94103. On August 27, 2012, in the case of *McCabe, et al. v.*  
*Intercontinental Resources, et al*, Alameda County Superior Court Case No. RG12637671, I served  
 4 the foregoing document(s):

5 **PLAINTIFF'S CASE MANAGEMENT CONFERENCE STATEMENT**


6 on the interested party(ies) below, using the following means:

7 Edward Totino  
 8 DLA PIPER LLP.  
 9 North Tower, Suite 400  
 10 2000 Avenue of the Stars  
 Los Angeles, CA 90067  
 Tel: (310)595-3025; Fax: (310)595-3025  
 Email: [Edward.totino@dlapiper.com](mailto:Edward.totino@dlapiper.com)

11 CT CORPORATION  
 12 818 West Seventh Street  
 13 2<sup>nd</sup> Floor  
 Los Angeles, CA 90017  
 14 Attorneys for Defendants  
 15 INTERCONTINENTAL HOTELS GROUP RESOURCES, INC. and  
 16 INTERCONTINENTAL HOTELS OF SAN FRANCISCO

17 ☒ (BY UNITED STATES MAIL) I enclosed the document(s) in a sealed envelope or package  
 18 addressed to the respective address(es) of the party(ies) stated above and placed the envelope(s) for  
 19 collection and mailing, following our ordinary business practices. I am familiar with the firm's  
 20 practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal  
 Service on that same day in the ordinary course of business. I am aware that on motion of party  
 served, service is presumed invalid if postal cancellation date or postage meter date is more than one  
 day after date of deposit for mailing of affidavit.

21 ☒ (State) I declare under penalty of perjury under the laws of the State of California that the  
 22 foregoing is true and correct.

23   
 24 Ann M. Stanton

# **EXHIBIT I**

COPY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, full name, address, and telephone number) <b>Edward Tobino (BBN 188237) / Ana Togvoronyan (BBN 246638)</b> <b>DLA PIPER US (LLP)</b> 2000 Avenue of the Stars, 4th Floor, North Tower Los Angeles, California 90067 TELEPHONE NO: 310-585-5000 FAX NO: 310-585-8300 EMAIL ADDRESS (optional): <a href="mailto:edward.tobino@dlapiper.com">edward.tobino@dlapiper.com</a> ATTORNEY FOR: <b>Intercontinental Hotels Group Resources, Inc.;</b> <b>Intercontinental Hotels of San Francisco, Inc.; and Six Continents Hotels, Inc.</b>		CM-116 FOR COUNTY USE ONLY  <b>ENDORSED FILED ALAMEDA COUNTY</b>  SEP 07 2012 CLERK OF THE SUPERIOR COURT <b>Anita Dhir</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda</b> STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: Oakland, California, 94612 CITY AND ZIP CODE:		
PLAINTIFF/RESPONDENT: <b>Laura McCabe and Letoya Simpson, individually and on behalf of similarly situated individuals</b> DEFENDANT/RESPONDENT: <b>Intercontinental Hotels Group Resources, Inc.; Intercontinental Hotels of San Francisco, Inc.; and Six Continents Hotels, Inc.</b>		
<b>CASE MANAGEMENT STATEMENT</b> (Check one): <input checked="" type="checkbox"/> <b>UNLIMITED CASE</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>LIMITED CASE</b> (Amount demanded is \$25,000 or less)		
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: 9/14/2012 Time: 8:30am Dept: 21 Div: Room:		
Address of court (if different from the address above):		
<input checked="" type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): <b>Edward Tobino</b>		
<b>INSTRUCTIONS:</b> All applicable boxes must be checked, and the specified information must be provided.		
1. Party or parties (check one): a. <input checked="" type="checkbox"/> This statement is submitted by party (name): <b>Intercontinental Hotels Group Resources, Inc.; Intercontinental Hotels of San Francisco, Inc.; and Six Continents Hotels, Inc.</b> b. <input type="checkbox"/> This statement is submitted jointly by parties (names):		
2. Complaint and cross-complaint (to be answered by plaintiff and cross-complaints only) a. The complaint was filed on (date): b. <input type="checkbox"/> The cross-complaint, if any, was filed on (date):		
3. Service (to be answered by plaintiff and cross-complaints only) a. <input type="checkbox"/> All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed. b. <input type="checkbox"/> The following parties named in the complaint or cross-complaint: (1) <input type="checkbox"/> have not been served (specify names and explain why not): (2) <input type="checkbox"/> have been served but have not appeared and have not been dismissed (specify names): (3) <input type="checkbox"/> have had a default entered against them (specify names): c. <input type="checkbox"/> The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):		
4. Description of case: a. Type of case in <input checked="" type="checkbox"/> complaint <input type="checkbox"/> cross-complaint (Describe, including nature of action): Plaintiff alleges unlawful recording of cellular telephone calls made to Defendant's reservation lines; pursuant to Cal. Penal Code § 832.7.		
Case # of EASTY1108855.1 Form Approved for Judiciary Use Judicial Council of California 01-110 (Rev. Nov 1, 2011)	<b>CASE MANAGEMENT STATEMENT</b>	
(Seal of the County of Alameda) Alameda County Seal		

CM-110

PLAINTIFF/PETITIONER: Laura McCabe and Latroya Simpson, individually and on behalf of similarly situated individuals

CASE NUMBER:  
RG12637671

DEFENDANT/RESPONDENT: Intercontinental Hotels Group Resources, Inc.; Intercontinental Hotels of San Francisco, Inc.; and Six Continents Hotels, Inc.

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.) Plaintiffs claim \$5,000 in statutory damages for each recording of cellular telephone calls in violation of Penal Code § 632.7 and § 637.2. Defendants deny that Plaintiffs or the putative class are entitled to any relief.
- ☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)
5. Jury or nonjury trial  
The party or parties request ☐ a jury trial ☒ a nonjury trial. (If more than one party, provide the name of each party requesting a jury trial):
6. Trial date  
a. ☐ The trial has been set for (date):  
b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (If not, explain): Defendants plan to remove this action to the United States District Court for the Northern District of California on or before they must respond to the complaint.  
c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):
7. Estimated length of trial  
The party or parties estimate that the trial will take (check one): n/a (see above)  
a. ☐ days (specify number):  
b. ☐ hours (short causes) (specify):
8. Trial representation (to be answered for each party)  
The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:  
a. Attorney:  
b. Firm:  
c. Address:  
d. Telephone number:  
e. E-mail address:  
f. Fax number:  
g. Party represented:  
☐ Additional representation is described in Attachment 8.
9. Preference  
☐ This case is entitled to preference (specify code section):
10. Alternative dispute resolution (ADR)  
a. ADR information package. Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.  
(1) For parties represented by counsel: Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.  
(2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.  
b. Referral to judicial arbitration or civil action mediation (if available).  
(1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.  
(2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.  
(3) ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. (specify exemption):



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PLAINTIFF/PETITIONER: Laura McCabe and Latroya Simpson, individually and on behalf of similarly situated individuals DEFENDANT/RESPONDENT: : Intercontinental Hotels Group Resources, Inc.; Intercontinental Hotels of San Francisco, Inc.; and Six Continents Hotels, Inc.	CASE NUMBER: RG12637671
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10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (check all that apply and provide the specified information):

	The party or parties completing this form are willing to participate in the following ADR processes (check all that apply):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (attach a copy of the parties' ADR stipulation):
(1) Mediation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other (specify):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

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PLAINTIFF/PETITIONER: Laura McCabe and Latroya Simpson, individually and on behalf of similarly situated individuals  
 DEFENDANT/RESPONDENT: : Intercontinental Hotels Group Resources, Inc.; Intercontinental Hotels of San Francisco, Inc.; and Six Continents Hotels, Inc.

CASE NUMBER  
 RG12637671

## 11. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (name):  
 b. Reservation of rights: ☐ Yes ☐ No  
 c. ☐ Coverage issues will significantly affect resolution of this case (explain):

## 12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

- ☐ Bankruptcy ☒ Other (specify):

Status: Defendants plan to remove this case to the Northern District of California on or before the date to respond to the Complaint, Oct. 1, 2012.

## 13. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.  
 (1) Name of case:  
 (2) Name of court:  
 (3) Case number:  
 (4) Status:  
☐ Additional cases are described in Attachment 13a.  
 b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

## 14. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

## 15. Other motions

- ☒ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):  
 If the case is not removed or is remanded, Defendants may file: Demurrer, Motion to Dismiss, Motion for Judgment on the Pleadings, Motion for Summary Judgment/Adjudication, Motion to Deny Certification.

## 16. Discovery

- a. ☐ The party or parties have completed all discovery.  
 b. ☐ The following discovery will be completed by the date specified (describe all anticipated discovery):
- | Party | Description   | Date |
|-------|---|------|
|       | Case not yet at issue.                                |      |
|       | Defendants plan to remove this case to federal court. |      |
|       | Parties request a continuance of the Conference.      |      |
- c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (specify):

CM-110

PLAINTIFF/PETITIONER: Laura McCabe and Latroya Simpson, individually and on behalf of similarly situated individuals  
 DEFENDANT/RESPONDENT: : Intercontinental Hotels Group Resources, Inc.; Intercontinental Hotels of San Francisco, Inc.; and Six Continents Hotels, Inc.

CASE NUMBER  
 RG12637671

## 17. Economic litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

## 18. Other issues

- ☒ The party or parties request that the following additional matters be considered or determined at the case management conference (specify): Defendants request that the case management conference be continued pending removal of this action to the federal court. Plaintiff has also requested a continuance.

## 19. Meet and confer

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain): Parties have requested a continuance of the conference; case is not yet at issue.
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

## 20. Total number of pages attached (if any): \_\_\_\_\_

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: September 7, 2012

Ana Tagvoryan

(TYPE OR PRINT NAME)

  
 (SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

  
 (SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

# **EXHIBIT J**

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**Superior Court of California, County of Alameda  
Rene C. Davidson Alameda County Courthouse**

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McCabe	No. <u>RG12637671</u>
Plaintiff/Petitioner(s)	Case Management Order
vs.	
Intercontinental Hotels Group Resources, Inc.	Judge: Wynne Carvill
Defendant/Respondent(s)	
(Abbreviated Title)	

**ORDER re: CASE MANAGEMENT**

**FURTHER CASE MANAGEMENT CONFERENCE**

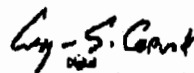
The Case Management Conference currently scheduled for 09/14/2012 is VACATED and continued to Monday 09/17/2012 at 08:30 AM in Dept. 21. The court would appreciate courtesy copies of the CMC statements by this Thursday.

**NOTICES**

The Court orders counsel and/or self-represented parties to obtain a copy of this order from the court's website <http://www.alameda.courts.ca.gov/domainweb>.

Any delay in the trial, caused by non-compliance with any order contained herein, shall be the subject of sanctions pursuant to CCP 177.5.

Dated: 09/10/2012



---

Judge Wynne Carvill



# EXHIBIT K

1 **DLA PIPER LLP (US)**  
2 **PERRIE M. WEINER (SBN 134146)**  
3 **EDWARD D. TOTINO (SBN 169237)**  
4 **ANA TAGVORYAN (SBN 246536)**  
5 **2000 Avenue of the Stars, Suite 400, North Tower**  
6 **Los Angeles, CA 90067-6023**  
7 **Telephone: 310.595.3000**  
8 **Facsimile: 310.595.3300**

9 **Attorneys for Defendants**  
10 **INTERCONTINENTAL HOTELS GROUP RESOURCES,**  
11 **INC; INTERCONTINENTAL HOTELS OF SAN**  
12 **FRANCISCO, INC.; and SIX CONTINENTS HOTELS, INC.**

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF ALAMEDA**

15 **LAURA MCCABE and LATROYA**  
16 **SIMPSON, individually and on behalf of**  
17 **similarly situated individuals,**

18 **Plaintiffs,**

19 **v.**

20 **INTERCONTINENTAL HOTELS GROUP**  
21 **RESOURCES, INC; INTERCONTINENTAL**  
22 **HOTELS OF SAN FRANCISCO, INC.; SIX**  
23 **CONTINENTS HOTELS, INC.; and DOES 2**  
24 **through 10, inclusive,**

25 **Defendants.**

**CASE NO. RG12637671**

**[Assigned to Hon. Wynne Carvill, Dept. 21]**

**NOTICE TO STATE COURT OF**  
**REMOVAL TO THE UNITED STATES**  
**DISTRICT COURT FOR THE NORTHERN**  
**DISTRICT OF CALIFORNIA**

**Complaint Filed: July 8, 2012**  
**Trial Date: None**

1 **TO THE CLERK OF THE COURT:**

2 PLEASE TAKE NOTICE that a Notice of Removal of this action was filed in the United  
3 States District Court for the Northern District of California on September 14, 2012, under United  
4 States District Court Case No. \_\_\_\_\_.

5 A true and correct copy of said Notice of Removal (without exhibits) is attached to this  
6 Notice, and is served and filed herewith as **Exhibit A**.

7 PLEASE TAKE FURTHER NOTICE that pursuant to 28 U.S.C. sections 1332, 1441, and  
8 1446, the filing of the Notice of Removal in the United States District Court for the Northern  
9 District of California, together with the instant filing of a copy of same with this Court effectuates  
10 the removal of this action and this Court may proceed no further unless and until the case is  
11 remanded.

12  
13 Dated: September 13, 2012

DLA PIPER LLP (US)

14 By: 

15 EDWARD D. TOTINO  
16 ANA TAGVORYAN  
17 Attorneys for Defendants  
18 INTERCONTINENTAL HOTELS GROUP  
19 RESOURCES, INC; INTERCONTINENTAL  
20 HOTELS OF SAN FRANCISCO, INC.; SIX  
21 CONTINENTS HOTELS, INC.  
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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 2000 Avenue of the Stars, Suite 400 North Tower, Los Angeles, California 90067-4704.

On September 14, 2012, I served the foregoing document(s) described as:

**NOTICE TO STATE COURT OF THE REMOVAL TO THE UNITED STATES  
DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA**

on interested parties in this action by placing ☐ the original ☒ true copy(ies) thereof enclosed in sealed envelopes as stated below.

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eagrover@kellergrover.com

*Attorneys for Plaintiffs*

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☒ **(BY MAIL)** The envelope was mailed with postage thereon fully prepaid. As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **(BY FACSIMILE)** I delivered such document by facsimile to the following persons at the facsimile telephone numbers listed above.

☐ **(BY HAND DELIVERY)** I delivered the within documents to Legal Support Unlimited for delivery to the above address(es) with instructions that such envelope be delivered personally on September 14, 2012 to the above named individuals.

☐ **(BY OVERNIGHT MAIL)** I am readily familiar with the firm's practice of collection and processing correspondence for mailing with an overnight courier service. Under that practice it would be deposited with said overnight courier service on that same day with delivery charges thereon billed to sender's account, at Los Angeles, California in the ordinary course of business. The envelope was sealed and placed for collection and mailing on that date following ordinary business practices.

1 ☒ (STATE) I declare under penalty of perjury under the laws of the State of California that  
2 the above is true and correct.

3 ☐ (FEDERAL) I declare that I am employed in the office of a member of the bar of this  
4 court at whose direction the service was made.

5 Executed on September 14, 2012, at Los Angeles, California.

6 Nicole Montemurro  
[Print Name Of Person Executing Proof]

Nicole Montemurro  
[Signature]

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# EXHIBIT L

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11   Facsimile: 310.595.3300

12   Attorneys for Defendants  
13   INTERCONTINENTAL HOTELS GROUP RESOURCES,  
14   INC; INTERCONTINENTAL HOTELS OF SAN  
15   FRANCISCO, INC.; and SIX CONTINENTS HOTELS

16                                   UNITED STATES DISTRICT COURT  
17                                   NORTHERN DISTRICT OF CALIFORNIA

18   LAURA MCCABE and LATROYA  
19   SIMPSON, individually and on behalf of  
20   similarly situated individuals,

21                                   Plaintiffs,

22                                   v.

23   INTERCONTINENTAL HOTELS GROUP  
24   RESOURCES, INC.;  
25   INTERCONTINENTAL HOTELS OF SAN  
26   FRANCISCO, INC.; SIX CONTINENTS  
27   HOTELS, INC.; and DOES 2 through 10,  
28   inclusive

                                 Defendants.

CASE NO.

**DECLARATION OF KEVIN RANDALL IN  
SUPPORT OF DEFENDANTS  
INTERCONTINENTAL HOTELS GROUP  
RESOURCES, INC., INTERCONTINENTAL  
HOTELS OF SAN FRANCISCO, INC., AND  
SIX CONTINENTS HOTELS, INC.'S  
NOTICE OF REMOVAL OF ACTION**

1 I, Kevin Randall, declare:

2 1. I am employed by Six Continents Hotels, Inc. as a Vice President of Reservations  
3 and Customer Care. I submit this Declaration on behalf of Defendants InterContinental Hotels  
4 Group Resources, Inc., InterContinental Hotels of San Francisco, Inc., and Six Continents Hotels,  
5 Inc. (collectively "IHG"). Each of the IHG Defendants is a corporation organized under  
6 Delaware law with its principal places of business in Atlanta, Georgia. I have been employed by  
7 Six Continents Hotels, Inc. for 13 years. As a result of my employment, as well as my review of  
8 records and other information available to me, I have knowledge of the following facts:

9 2. In their Complaint, Plaintiffs allege that Defendants recorded and/or intercepted  
10 cellular telephone calls made or routed to the telephone numbers 1-888-465-4329 and 1-888-211-  
11 9874 (the "central reservation lines") without disclosing to the callers that the telephone calls  
12 would be recorded.

13 3. Approximately 4,000 telephone calls per month from telephone numbers with  
14 California area codes are made to the two central reservation lines referenced above, reach an  
15 agent and are recorded. The fact that a telephone call came from a telephone number with a  
16 California area code does not mean that the call actually was made from California or was from a  
17 California resident given the mobility of cellular telephones and the increasing prevalence of  
18 Voice-Over-IP and phone number portability. However, I have reviewed a Pew Research Center  
19 Publication from 2009 entitled "Accurately Locating Where Wireless Respondents Live Requires  
20 More Than A Phone Number" that concludes that the area codes of 97% of landline telephone  
21 numbers and 90% of cell phone telephone numbers matched the state of residence of the owner of  
22 the numbers. A copy of this publication is attached as Exhibit A hereto. Therefore, I am  
23 reasonably certain that at least half of the calls (approximately 2,000 per month) actually were  
24 made from California.

25 4. I have reviewed a report published by The U.S. Center for Disease Control and  
26 Prevention's National Center for Health Statistics entitled *Wireless substitution: Early release of*  
27 *estimates from the National Health Interview Survey, July-December 2011*, National Center for  
28 Health Statistics, June 2012. That report contains statistics from the National Health Interview

1 Survey (NHIS) including that in 2011 over 30% of adults were wireless only, i.e. they used only  
 2 wireless telephones. Applying these statistics to the estimated approximately 24,000 telephone  
 3 calls from California that reached an agent and were recorded during the one year period  
 4 preceding the filing of the Complaint, I estimate that approximately 7,000 of the calls were from  
 5 cellular telephones. A true and correct copy of the report, Blumberg SJ, Luke JV, *Wireless*  
 6 *substitution: Early release of estimates from the National Health Interview Survey, July-*  
 7 *December 2011*, National Center for Health Statistics, June 2012, is attached as Exhibit B hereto.  
 8 It is also available at: <http://www.cdc.gov/nchs/nhis.htm>.

9 5. Since Plaintiffs are seeking statutory damages of \$5,000 per cellular call recorded,  
 10 given the estimated number of recorded cellular telephone calls at issue in this action, the amount  
 11 in dispute clearly exceeds \$5 million.

12 6. By my statements above, I do not admit or concede that Defendants violated the  
 13 law with respect to any of the telephone calls at issue in this action. Nor should any of my  
 14 statements be taken to mean that all telephone calls were handled in the same manner or that a  
 15 class should be certified in this action.

16 I declare under penalty of perjury under the laws of the State of California and the United  
 17 States that the foregoing is true and correct.

18 Executed on September 4, 2012 at Salt Lake City, Utah.

19  
 20   
 21 KEVIN RANDALL